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**SUPERIOR COURT OF ARIZONA  
COUNTY OF MOHAVE**

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April 30, 2021

Clerk of the Arizona Supreme Court  
1501 W. Washington St. Room 402  
Phoenix, AZ 85007-3329

Via electronic submission

Re: Rule Petition R-21-0021

Honorable Justices of the Supreme Court of Arizona:

On April 13, 2021, the judges of the Mohave County Superior Court convened at their regular judges' meeting and resolved unanimously to support the passage of Rule Petition R-21-0021.

Rule Petition R-21-0021, proposed by the State Bar, seeks to amend Civil Rules 4.1 and 4.2 by adding a requirement that a plaintiff file a motion and affidavit of due diligence prior to serving a party by publication. The amendment addresses the due process concerns identified in Ruffino v. Lokosky, 245 Ariz. 165 (App. 2018).

It is fundamental to due process that a reasonable and diligent effort be made to locate and personally serve defendants with process in a civil suit. Judicial oversight of that effort, as proposed by the Rule Petition, would abolish the undesirable practice of plaintiffs determining for themselves whether their effort at personal service meets due process requirements. A court's approval prior to publication would help ensure plaintiffs act correctly in their efforts at personal service prior to the advancement of their cases to default proceedings.

The proposed amendment considers the importance of email, social media and other forms of communication in efforts to locate and personally serve a party. It cannot be said reasonably that service by publication, especially in today's day and age, results in actual notice to defendants in an appreciable number of cases. Therefore, judicial oversight as to the adequacy of the efforts at personal service is appropriate prior to allowing a plaintiff to proceed with a less desirable and effective method of service.

Amendment also provides a safeguard against illusory diligence. In Ruffino the plaintiff performed a skip trace and attempted service numerous times at three possible

addresses for the defendant. It's easy to imagine that many parties, attorneys and judges might think those efforts were reasonable and diligent. However, the plaintiff knew the defendant's email address, phone number and how to contact her using social media, yet he failed to communicate through any of those means to arrange for personal service. The trial court set aside a default judgment after finding the underlying effort at personal service fell short of reasonable diligence.

The amendment of Rules 4.1 and 4.2 is practical. While not currently required, in practice it is common for parties to move for an order allowing service by publication. This might be because the vast majority of jurisdictions (46 states) already impose such a requirement. However, as a practical matter, it's prudent to seek a court's permission first rather than run the risk of a default judgment later being set aside as void. Also, it seems in the interest of judicial economy that any concerns as to service of process be addressed before they ripen into more substantial controversies.

For the foregoing reasons we ask the Court's approval of Rule Petition R-21-0021.

Respectfully submitted,



Hon. Kenneth L. Gregory  
Judge Pro Tempore  
With Permission on behalf of  
The Mohave County Superior Court

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